

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRANDON T. GATES,

Plaintiff,

v.

JOSE BRIONES, *et al.*,

Defendants.

CASE NO. C20-0895-JCC

ORDER

This matter comes before the Court on Plaintiff's objections (Dkt. No. 16) to the report and recommendation ("R&R") of the Honorable Mary Alice Theiler, United States Magistrate Judge (Dkt. No. 11). Having thoroughly considered the R&R, Plaintiff's objections, and the relevant record, the Court finds oral argument unnecessary and hereby OVERRULES Plaintiff's objections (Dkt. No. 16), ADOPTS the R&R (Dkt. No. 11), DENIES Plaintiff's application to proceed *in forma pauperis* (Dkt. No. 1), and DISMISSES the case without prejudice for the reasons explained herein.

In a proposed amended complaint, Plaintiff alleges that, while detained at the Island County Correction and Detention Facility in early 2020, Defendants violated his Equal Protection rights and rights under certain federal criminal statutes. (Dkt. No. 9 at 4–8.) Judge Theiler reviewed Plaintiff's original complaint, as well as his amended complaint, and found that the amended complaint both alleged frivolous claims and failed to state a claim for which relief

1 could be granted. (Dkt. No. 11 at 4–7.) On this basis, Judge Theiler recommended that the Court
2 deny Plaintiff’s motion to proceed *in forma pauperis* and dismiss the case pursuant to 28 U.S.C.
3 § 1915(e)(2)(B). (Dkt. No. 11.) Plaintiff objected to Judge Theiler’s recommendation, (Dkt. No.
4 16), which the Court addresses herein.

5 Objections to a magistrate judge’s R&R are reviewed *de novo*. 28 U.S.C. § 636(b)(1).
6 District courts review *de novo* those portions of an R&R to which a party properly objects. *See*
7 *id.*; Fed. R. Civ. P. 72(b)(3). Objections are required to enable the district court to “focus
8 attention on those issues—factual and legal—that are at the heart of the parties’ dispute.”
9 *Thomas v. Arn*, 474 U.S. 140, 147 (1985). General objections, or summaries of arguments
10 previously presented, have the same effect as no objection at all, since the court’s attention is not
11 focused on any specific issues for review. *See United States v. Midgette*, 478 F.3d 616, 622 (4th
12 Cir. 2007).

13 The Court may deny an application to proceed *in forma pauperis* and shall dismiss a
14 complaint if it is frivolous or fails to state a claim for which relief may be granted. 28 U.S.C.
15 § 1915(e)(2)(B). An action is frivolous if it lacks a cognizable legal theory, and a complaint fails
16 to state a claim for which relief can be granted when it lacks sufficient facts to support a
17 cognizable legal theory. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Bell Atl. Corp. v.*
18 *Twombly*, 550 U.S. 544, 555 (2007).

19 Judge Theiler found that Plaintiff’s proposed amended complaint lacks a cognizable legal
20 theory with respect to the statutory violations because 18 U.S.C. §§ 241, 242 do not establish
21 causes of action for private citizens, nor can they form the basis of a claim brought pursuant to
22 42 U.S.C. § 1983. (Dkt. No. 11 at 3–5.) The Court agrees. Judge Theiler also found that the
23 complaint failed to state a claim for which relief can be granted pursuant to § 1983 with respect
24 to the alleged Equal Protection violations because the complaint lacks facts suggesting that
25 Defendants acted with an intent or purpose to discriminate against Plaintiff based upon his
26 membership in a protected class. (*Id.*) The Court also agrees.

1 In objecting to Judge Theiler's R&R, Plaintiff does not meaningfully address the
2 deficiencies *in his complaint* identified by Judge Theiler. (*See generally* Dkt. No. 9.) Instead, he
3 restates and expands upon the same allegations, rather than addressing why they are sufficient, as
4 stated in the amended complaint, to support a cognizable legal claim. (*Id.*) This does not cure the
5 deficiencies Judge Theiler addressed in her R&R. Therefore, Plaintiff fails to identify an error in
6 Judge Theiler's R&R.

7 For the foregoing reasons, the Court hereby ORDERS that:

- 8 1. Plaintiff's objections (Dkt. No. 16) to the R&R (Dkt. No. 11) are OVERRULED;
- 9 2. The R&R (Dkt. No. 11) is APPROVED and ADOPTED;
- 10 3. Plaintiff's application to proceed *in forma pauperis* (Dkt. No. 1) is
11 DENIED;
- 12 4. This case is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B);
- 13 5. The Clerk is DIRECTED to count this dismissal as a strike under 28 U.S.C.
14 § 1915(g); and
- 15 6. The Clerk is DIRECTED to send a copy of this order to Plaintiff and to Judge
16 Theiler.

17 DATED this 29th day of January 2021.

18
19
20
21
22
23
24
25
26



John C. Coughenour
UNITED STATES DISTRICT JUDGE